

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JAMES MICHAEL FLEMMING,)	Civil Action No. 4:19-cv-3373-TMC-TER
)	
Plaintiff,)	
)	
-vs-)	
)	ORDER
)	
OFFICER KELLY J. REYNOLDS, SGT.)	
LINEN, and CPT. HOLSINGER,)	
)	
Defendant.)	
_____)	

Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights. Presently before the court are Plaintiff's Motions for Issuance of Subpoena (ECF Nos. 39, 43), Motions to Amend Complaint (ECF Nos. 49, 65, 75), Motion for Copies (ECF No. 66), and Motion to Take Deposition (ECF No. 72).¹ All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e), DSC.

Plaintiff has filed three motions to amend his amended complaint, each of which appears to be an attempt to remedy a deficiency identified by Defendants in their response to the previous motion. The first motion to amend contains only additional documents Plaintiff seeks to add to his complaint. The second motion to amend includes a proposed amended complaint with the additional documents. The third motion to amend includes a proposed amended complaint, the additional documents, and a motion asking to amend "because I left some things out that I feel could help me with my case." ECF No. 75. Rule 15(a)(2), Fed.R.Civ.P., provides that leave to amend a pleading

¹Other motions are pending and will be addressed by separate report and recommendation.

should be given freely when justice so requires. Plaintiff's third Motion to Amend (ECF No. 75) is **GRANTED**, and the Clerk's Office is directed to file the Second Amended Complaint.² Plaintiff's first and second Motions to Amend (ECF Nos. 49, 65) are **MOOT**.

Plaintiff also has filed two additional motions to subpoena "Mr. Spurlock" as a witness in this case and a separate motion to depose Mr. Spurlock. Plaintiff's previously filed motion to subpoena Mr. Spurlock was denied without prejudice and with leave to refile closer to time for trial. However, upon consideration of the present motions, it appears that Plaintiff seeks to subpoena Mr. Spurlock to be deposed. Except in certain circumstances in which leave of the court is required, see Fed.R.Civ.P. 30(b)(2), a party may take an oral deposition of a nonparty without leave of the court by serving a subpoena in accordance with Fed.R.Civ.P. 45. However, although Plaintiff has been granted in forma pauperis status in this case pursuant to 28 U.S.C. § 1915(d), such status does not mean that Plaintiff's discovery expenses are underwritten or waived. Plaintiff is advised that subpoenas for attendance at a deposition cannot be enforced without proper prepayment of the appropriate witness and mileage fees. See Fed.R.Civ.P. 45(b)(1). Further, the party seeking to depose a witness is responsible for arranging all aspects of the deposition, including, but not limited to, securing a location³ and retaining a court reporter.

The clerk of court is directed to send one unsigned blank subpoena form to Plaintiff. Plaintiff shall appropriately complete the form and return it to the court for review within ten days of the date of this order. Once the subpoena form has been appropriately completed, returned and reviewed by the court, if appropriate, it will be signed and returned to Plaintiff for prompt service upon the third-

²As a result, Plaintiff's Motion for Summary Judgment (ECF No. 35) is **MOOT**.

³Because Plaintiff is a prisoner, the location for the deposition must comply with all safety protocols required by the correctional institution where Plaintiff is confined.

party. Plaintiff also must demonstrate to the court an ability to pay any associated costs.

For these reasons, Plaintiff's third Motion for Subpoena (ECF No. 43) is **GRANTED**, second Motion for Subpoena (ECF No. 39) is **MOOT**, and Motion to Take Deposition (ECF No. 72) is **DENIED** as unnecessary.

Plaintiff also moves for "one free electronic copy of all documents filed in this case." ECF No. 66. The docket sheet for this case, a copy of which is being provided to Plaintiff, includes 78 docket entries. Plaintiff fails to show a need for any particular documents or provide a reason for why he does not already have copies of the documents filed in this case. Therefore, Plaintiff's Motion for Copies (ECF No. 66) is **DENIED** without prejudice.

IT IS SO ORDERED.

September 29, 2020
Florence, South Carolina

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge